**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 77 of 1999**

**For Approval and Signature:**

**HON'BLE MR.JUSTICE J.M.PANCHAL**
**HON'BLE MR.JUSTICE H.B.ANTANI**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**SATVIRSINH ARJUNSINH PANDIT - Appellant**
**Versus**
**STATE OF GUJARAT - Respondent**

==========

**Appearance :**
MR PM VYAS for Appellant.
MR KT DAVE, A.P.P. for Respondent.

==========

**CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL**
**and**
**HON'BLE MR.JUSTICE H.B.ANTANI**
**Date : 20/07/2005**

**ORAL JUDGMENT**

**(Per : HON'BLE MR.JUSTICE H.B.ANTANI)**

The present appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated 8.12.1998, rendered by the learned Additional Sessions Judge, Court No.6, Ahmedabad, in Sessions Case No.21 of 1998, by which the appellant is convicted under Sections 363, 366 & 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and

fine of Rs.1500/- for commission of offence punishable under Section 363 I.P.C. as well as R.I. for 10 years and fine of Rs.1500/- for commission of offence punishable under Section 366 I.P.C. and R.I. for 10 years and fine of Rs.1500/-, in default, R.I. for one year for commission of offence punishable under Section 376 I.P.C. It may be stated that the learned Judge has directed that substantive sentences shall run concurrently.

2. This is a case under Section 376 I.P.C. and, therefore, in view of the decision in the case of State of Punjab v. Ram Dev, 2003 A.I.R. SCW 6947, this Court has refrained from mentioning the name of the victim.

3. The facts emerging from the record of the case are as under :

Complainant Honshilal Chhakulal Diwakar is residing with his family at 32, Railway Quarters, behind Sabarmati Railway Station, Dharmnagr, Sabarmati, Ahmedabad on the date of the incident. His family consists of his wife, five daughters and a son. The victim was born on 10.7.1984. On 2.3.1994, the complainant went to Gandhidham for his personal work and returned home on 3.3.1994 in the early morning hours.

When he returned from Gandhidham, his wife told him that when she had gone to answer nature's call in morning hours, the appellant came to their house and kidnapped the victim from her guardianship. She also informed the complainant that the appellant gave inducement and enticed the victim and, eloped with the victim with a view to having illicit intercourse with her. On receiving this information, immediately the complainant made search of the victim at different places. The complainant first of all went to Sitaram Chhotelal with whom the appellant was working. Thereafter the complainant went to village Acher in search of the victim and the appellant. When the complainant came to know that the appellant had left the village and was original resident of Agra city, he went to Agra in search of the victim. On reaching Agra the complainant made frantic search of the victim at different places, but, she could not be found out from anywhere and, therefore, the complainant reached the surrounding areas of Agra City. When the whereabouts of the victim could not be traced out, the complainant returned to Ahmedabad and lodged complaint with Sabarmati Police Station. On the complaint being lodged by the complainant, C.R.No.I.19/94 for the offences punishable under Sections 363 and 366 I.P.C. was registered. During the course of police investigation, both- the victim and

the appellant could not be traced out and they were found missing. Later on, after about 4 years from the date of the incident, the victim was found from the custody of the appellant in Kota city of Rajsthan by local police. The statement of the victim was recorded which indicated that she was subjected to forcible sexual intercourse. Therefore, offence under Section 376 IPC was added to F.I.R. lodged by her father. The appellant was subsequently arrested in connection with the complaint lodged by Honshilal Chhakulal Diwakar. During the course of investigation, statements of various persons who were found to be conversant with the facts of the case from the neighbourhood were recorded. The panchnama of the place of incident was drawn in the presence of panch witnesses. The victim was sent for medical examination. After medical examination of the victim, medical case papers pertaining to her examination were obtained. The certificate of age of the victim was obtained by the investigating officer. After completing the investigation, the appellant was chargesheeted and produced before the learned Metropolitan Magistrate, Ahmedabad. Since the case was exclusively triable by a Sessions Court, the case was committed to Sessions Court where it was numbered as Sessions Case No. 21 of 1998.

4. Charge against the appellant was framed at Exh.1 for the offences punishable under Sections 363 366 & 376 I.P.C. on 19th March, 1998. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. Therefore, the matter was set down for full-fledged trial before the Sessions Court. The prosecution examined (1) the victim as PW.1 at Exh.5, (2) Nandsing Gopalsing Chauhan as PW.2 at Exh.6, (3) Virmadevi Honshilal Diwakar as PW.3 at Exh.7, (4) Anantrai Kapurchand Vania as PW.4 at Exh.8, (5) Medical Officer Dipakkumar Champaklal Jagani as PW.5 at Exh.10, (6) Narayanprasad Kamalprasad Mital as PW.6 at Exh.16, (7) Honshilal Shakulal Diwakar as PW.7 at Exh.17, (8) Pradipkumar Ravishanker Pandya as PW.8 at Exh.20, (9) Bantibai Bhojaram Rajput as PW.9 at Exh.22, (10) Bhavnaben Bhardwaj Dwivedi as PW.10 at Exh.26, (11) Maganbhai Jivabhai Katara as PW.11 at Exh.30, (12) Niraj Dilipkumar Shah as PW.12 at Exh.34, (13) Narendra Gunvantrai Joshi as PW.13 at Exh.37, (14) Munni @ Tilakkumari Madansinh Ravat as PW.14 at Exh.39, and (15) Javansinh Bhavansinh Rajput as PW.15 at Exh.46, to prove its case against the appellant. The prosecution also produced documentary evidence such as complaint lodged by Honshilal Shakulal Diwakar at Exh.18, panchnama of place of incident at Exh.21, injury certificate of the victim

at Exh.11, medical case papers of the victim at Exhs.12 & 14, certificate issued by Nagar Primary Education Committee at Exh.23, General Register of the School at Exh.27, certificates of the school at Exhs. 28 & 29, certificate of examination of the victim at Exh.35, injury certificate issued to the victim at Exh.38, plea of mercy regarding sentence at Exh.53 etc. in support of its case against the appellant.

5. After recording of entire gamut of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. The appellant in his further statement mentioned that a false case was foisted on him, but, no defence evidence was led by him.

6. On appreciation of evidence adduced by the prosecution, the learned Judge of the trial Court held that it was proved by the prosecution beyond reasonable doubt that on March 3, 1994, the appellant abducted or kidnapped minor victim aged about 8 to 10 years from lawful custody and guardianship of her parents with

intent to compel her to marry the appellant against her will and forced and/or seduced her to illicit intercourse with him. In view of this conclusion based on appreciation of evidence, the learned Judge has convicted the appellant under Sections 363, 366 & 376 IPC and imposed different sentences mentioned in earlier part of this judgment, giving rise to instant appeal.

7. Mr.P.M.Vyas, learned counsel appearing on behalf of the appellant, submitted that the learned trial Judge has not appreciated the entire evidence in its true perspective and committed error in convicting the appellant under Sections 363, 366 & 376. The learned advocate further submitted that even ingredients contained in Sections 363, 366 & 376 I.P.C. have not been established by the prosecution and, therefore, the appellant is liable to be acquitted. The learned counsel further submitted that the prosecution has not been able to establish that the age of the victim was below 16 years at the time of incident and, therefore, the appellant should not have been convicted under sections 363, 366 and 376 I.P.C. According to the learned counsel, the school leaving certificate is not produced by the prosecution to prove the age of the victim and the Guardian Form which is produced by the prosecution,

cannot be considered as enough proof of age of the victim and, therefore, the age of the victim below 16 years cannot be said to have been proved in conclusive manner. The learned advocate contended that there are many infirmities in the evidence adduced by the victim as well as parents of the victim and those infirmities go to the root of the matter, vitiating conviction of the appellant. It was contended by the learned counsel of the appellant that since the evidence given by the victim is full of infirmities, no credence could be given to it. It was contended by the learned counsel that even necessary corroboration to the evidence adduced by the victim is not forthcoming and, therefore, benefit of the same is required to be given to the appellant. The learned advocate further contended that admissions, omissions and contradictions in the deposition adduced by the victim have not be carefully considered by the learned trial Judge and, therefore, impugned judgment should be set aside. It was argued that since the prosecution has not proved the case against the appellant by adducing cogent, convincing and conclusive evidence, benefit of doubt is required to be given to the appellant and, therefore, the appeal should be allowed.

8. Mr.K.T.Dave, learned A.P.P. representing the

respondent-State, argued that testimony of the victim, who has been examined at Exh.5, gets necessary corroboration from the evidence of Virmadevi H.Diwakar, who is mother of the victim, examined at Exh.7 and that of Honshilal Diwakar, who is father of the victim, examined at Exh.17. It was contended by the learned counsel for the State Government that the victim was induced by the appellant by giving allurements and enticed her and took her from lawful guardianship of her parents within the meaning of Section 363 I.P.C. It was emphatically submitted by the learned counsel that the victim was kidnapped by the appellant with intent to have sexual intercourse with her against her will and desire and, therefore, the provisions of Section 366 I.P.C. are attracted and proved by the prosecution in a conclusive manner and the finding with regard to the same cannot be termed as erroneous. The learned counsel contended that the victim has deposed in her testimony at Exh.5 that she was induced by the appellant, took her first to Ajmer, then Jodhpur and subsequently to Ajmer and Kota and committed rape on her. It was contended by the learned counsel that the age of the victim was approximately 8 to 10 years on the date of the incident and repeated rape committed on the victim by the appellant has been amply proved by the medical evidence on record of the case

whereas the fact that the age of the victim was below 16 years is also proved by the prosecution by producing Guardian Form at Exh.22 and the school leaving certificate at Exh.27. It was argued that ossification test also lends necessary corroboration with regard to the age of the victim. The learned A.P.P. contended that on perusal of the entire oral deposition and the documentary evidence it has been established by the prosecution that rape was committed on the victim by the appellant within the meaning of Section 376 I.P.C. and, therefore, the order of conviction against the appellant under Section 376 I.P.C. requires to be upheld by this Court. The learned counsel submitted that on perusal of the entire gamut of oral deposition and the documentary evidence, it is evident that the prosecution has established guilt of the appellant and, therefore, the judgment rendered by the learned Judge of the trial Court requires to be upheld and the appeal preferred by the appellant, which lacks merits, requires to be dismissed out of hand.

9. This Court has heard Mr.P.M.Vyas, learned counsel of the appellant and Mr.K.T.Dave, learned A.P.P. for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive

appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. The date of birth of the victim is 10.7.1984 and the date of birth has been, in our view, conclusively established by the prosecution by production of Guardian Form at Exh.22, and document produced at Exh.27, which is General Register of the School. The Guardian Form was filled up by the father of the victim. The Principal of Sabarmati Hindi Primary School Bantibai Bhojaram, PW.9, examined at Exh.22, has given deposition to the effect that the same was filled up by the father of the victim. The school register which is produced at Exh.27 also mentions the date of birth of the victim as 10.7.1984. Thus, in our view, the victim was aged approximately 10 to 12 years on the date of the incident. Even the medical evidence provides necessary corroboration to the aforesaid aspect. We have considered the deposition adduced by the victim at Exh.5 wherein she has in clear and categorical terms deposed that by inducing her and giving allurements, the appellant enticed her from lawful guardianship of her parents. The appellant, initially took the victim to Ajmer and subsequently to Jodhpur, Ajmer and Kota where, as per her say, he committed rape

on her against her will and desire. The deposition given by the victim gets necessary support/corroboration from Nandsing Gopalsing Chauhan, PW.2 examined at Exh.6. Nandsingh Chauhan has stated that he had provided a room on rent to the appellant and the victim and the appellant had resided with the victim in the said room. Nandsingh has further stated that after 10 to 15 days of occupation of room by the appellant, quarrel had ensued between the appellant and the victim. According to him, on one day, the appellant had gone to do his duty and at that time, the victim was found sitting in sullen mood. The witness has stated before the Court that he had made inquiry and the victim had informed him that the appellant was physically molesting her and had bad eye on her. According to this witness, therefore, he had said that there was nothing wrong in behaviour of the appellant as she was his wife. What is mentioned by the witness is that thereupon the victim had informed that she was not wife of the appellant and the appellant had brought her from Ahmedabad after kidnapping her. According to this witness, he had informed what was mentioned by the victim to his son Chandrasinh, as a result of which, his son Chandrasinh lodged complaint with Vigyannagar Police Station and, therefore, the Police had arrested both of them. The witness has in no uncertain terms, stated that

the victim had informed him that the appellant was committing rape on her every night. Though this witness is searchingly cross-examined, his assertion that he had a talk with the victim and that the victim had informed him that the appellant was committing rape on her every night, could not be demolished. Further, testimony of witness Naranprasad Kamalprasad Mittal, recorded at Exh.16, also lends corroboration to the evidence of the victim. Mr.Mittal has stated that the appellant had come along with the victim and resided in his house during the appellant's stay at Ajmer. So also, the evidence of Munni @ Tilakkumari Ravat, examined at Exh.39, provides necessary corroboration to the testimony of the victim that the appellant had induced the victim and taken her to various places like Ajmer, Kota, Jodhpur, etc. It is relevant to notice that witness Munni Ravat has also mentioned in her deposition before the Court that the appellant had introduced the victim as his daughter and this is the exact case pleaded by the victim. Likewise, the evidence of Virmadevi, mother of the victim and father Honshilal Diwakar, who are examined at Exh.7 and Exh.17, also provides necessary corroboration to the deposition adduced by the victim that she was induced by the appellant and the appellant by giving inducement, had enticed her from lawful guardianship of her parents.

Thus, the main ingredients of Sections 363 & 366 I.P.C. are satisfied in the present case and the prosecution has proved that the victim was enticed by the appellant from lawful guardianship of her parents and by inducing her and/or by giving allurements, kidnapped her with an intent to commit rape on her. Even rape, which has been committed by the appellant on the victim, in our view, has been established by the prosecution by adducing cogent and convincing evidence. The evidence adduced by the victim, if perused in its proper perspective along with the deposition adduced by her parents and the other witnesses such as Nandsing Gopalsing, PW.2 examined at Exh.6, Naranprasad Kamalprasad Mital, PW.6 examined at Exh.16, Munni @ Tilakkumari Madansinh Ravat, PW.14 examined at Exh.39, establishes that repeated rape was committed on the victim by the appellant. Even the medical evidence provides necessary corroboration to the testimony adduced by the victim, and in view of the aforesaid facts and circumstances of the case, and on perusal of the entire gamut of oral deposition as well as documentary evidence, commission of offence punishable under section 376 I.P.C. is also established by the prosecution. The complainant had no animosity against the appellant so as to falsely implicate him in the commission of the offence. In view of the aforesaid

discussion, since the age of the victim was below 16 years on the date of the incident, the provisions contained in Sections 363, 366 & 376 I.P.C. are rightly invoked and the order of conviction passed by the learned trial Judge, in our view, requires to be upheld. The sentence which is imposed on the appellant cannot be said to be harsh and no lenient view is required to be taken in the matter more particularly when substantive sentences are ordered to run concurrently. In view of the aforesaid discussion, we do not find any substance in instant appeal preferred by the appellant and the same is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal articles are to be disposed of in terms of directions issued by the learned Judge of the trial Court in the impugned judgment.

[J.M.PANCHAL,J.]

[H.B.ANTANI,J.]

(patel)